

USSN: 08/637,752
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REMARKS

In the instant amendment, Claims 12, 13 and 17-21 are pending and under consideration. Claims 12 and 17 are amended. Support for the amendment is found at least at p. 9, lines 18-20. Applicant submits that no new matter is introduced by way of this amendment.

Applicant appreciates the Examiner's notification that the 101 and 112 rejections have been withdrawn. Also, Applicant appreciates notification that art rejections based on Hunter *et al.*, Hoggan *et al.*, or Georg-Fries *et al.* and Ruffing *et al.* are withdrawn.

I. REJECTIONS

A. Rejection of the Claims Under 35 U.S.C. § 102

Claims 12 and 17 are rejected under 35 U.S.C. 102(e) as anticipated by Shenk et al. (U.S.P.N. 6,489,163) (Shenk).

For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference. *See In re Bond*, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). In addition, as noted by the Examiner, a reference must be enabling to be available as prior art.

Shenk describes helper-free stocks of adeno-associated virus and methods of producing such recombinant adeno-associated virus. Shenk describes immunoprecipitation of AAV capsid proteins with a monoclonal antibody prepared against purified AAV capsid proteins.

In contrast, present claim 12 is directed to a kit for detecting an AAV antigen comprising a monoclonal antibody directed to an AAV type 2 capsid or a protein thereof, capable of detecting said AAV type 2 capsid or a protein thereof in ELISA assay,

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immunofluorescence or Western blotting, in a suitable container. However, to the extent Shenk has enabled any antibody, Shenk certainly fails to disclose an antibody capable detecting AAV type 2 capsid or protein thereof in ELISA, immunofluorescence or Western blotting. As such, Applicant submits that Shenk fails to disclose each element of claim 12 and those that depend from it. Applicant respectfully requests the Examiner to withdraw the rejection.

Similarly, claim 17 is directed to an isolated monoclonal antibody directed against an AAV type 2 capsid or a protein thereof, capable of detecting AAV type 2 capsid or a protein thereof in ELISA assay, immunofluorescence or Western blotting. However, again Applicant notes that Shenk fails to disclose an antibody capable of detecting AAV type 2 capsid or a protein thereof in ELISA assay, immunofluorescence or Western blotting. Applicant respectfully requests the Examiner to withdraw the rejection of claim 17.

B. The Rejection of Under 35 U.S.C. § 103(a)

Claims 12 and 17 are rejected under 35 U.S.C. 103(a) as obvious over Shenk.

There are three requirements to establish a *prima facie* case of obviousness. These include that “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations” (MPEP § 2143).

Shenk is described above.

Claims 12 and 17 also are described.

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Here, Applicant submits that the prior art fails to teach or suggest all of the claim limitations. As noted above, Shenk fails to teach an antibody capable of detecting said AAV type 2 capsid or a protein thereof in ELISA assay, immunofluorescence or Western blotting.

As such, Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness.

Moreover, even assuming, *arguendo*, that all elements were taught or suggested in the prior art, Applicant submits that the Examiner has failed to set forth adequate teaching that would have motivated one of ordinary skill in the art to modify Shenk to reach the claimed invention. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection.

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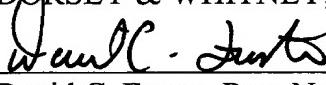
CONCLUSION

Applicant submits that Claims 12, 13, and 17-21 satisfy all the criteria for patentability. Therefore, Applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve any remaining items.

Respectfully submitted,

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